

SUBJECT: Penalties for negligent gun storage

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 7 ayes — Oakley, Bailey, Allen, Carter, Edwards, Madden, McCoulskey

0 nays

2 absent — Driver, Luna

WITNESSES: For — Jim and Lynda Tarr, Gun Responsibility in Every Family (GRIEF); Sandy Kibby, Texas PTA; Dianne Clements, Richard Negri and Whitson Clements, Zero Accidental Killings (ZAK); Jim Fawcett, Texas Police Chiefs Association; Andy Kahan, Houston Mayor's Office; Betty Anderson, League of Women Voters of Texas; Dr. Clift Price, Texas Medical Association and Texas Pediatric Society; David Smith, Texans Against Gun Violence-Houston Chapter; Nancy Sims, Child Abuse Prevention Network; Sergeant S.C. Van Vleck, Fort Worth Police Department; Constable Larry Long, for himself and Constable Victor Trevino; Leslie A. Barnard, Houston Chapter of Texans Against Gun Violence.

Against — Joe McBride, Texas Gun Dealers Association; Donald A. Loucks and Paul Velte, IV, Peaceable Texans for Firearms Rights; Morris Johnston, Texas State Rifle Association; Carol Lockett; Charles Wallace.

On — David Zane, Texas Department of Health

DIGEST: CSHB 44 would establish criminal penalties for the illegal storage of guns and require gun dealers to post a warning regarding the offense. The bill would also allow school districts to conduct gun safety programs.

Criminal offense for child access. A person would commit an offense if a child age 16 or younger gained access to a gun and the person was criminally negligent in failing to secure the gun or in leaving the gun in a place where the owner knew or should have known that a child would gain access. The person would have an affirmative defense to prosecution if the child's access to the gun was supervised by an adult for hunting, sporting

or other lawful purposes; involved the lawful defense of people or property; or was gained by unlawful entry of property.

An offense would be a Class B misdemeanor, maximum penalty of 180 days in jail and a \$2,000 fine. If a child discharged a firearm and caused death or serious bodily injury to himself or others, the offense would be a Class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine.

If a court allowed community supervision (probation) for an illegal storage offense, the defendant could be required to perform public service in a local hospital trauma unit or other appropriate public service activity or be required to attend a firearms safety course approved or exceeding the standards set by the National Rifle Association.

Gun dealers. Gun dealers would be required to post conspicuously on the premises a sign in one-inch block letters stating, "It is unlawful to store, transport, or abandon an unsecured firearm in a place where children are likely to be and can obtain access to the firearm."

Education. The bill would authorize and encourage school districts to provide or participate in a firearms safety program for students in kindergarten through 12th grade. Participation would not be mandatory if the district received a note from the student's parents asking for an exemption from the program.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSHB 44 would force gun owners to recognize and deal with the inherent danger of having firearms around children. Children are becoming more and more fascinated with guns, as reflected in the rising rate of youth-related shootings. It has become commonplace for children to gain access to loaded weapons and kill either themselves or someone else. Approximately one child a week died in an accidental shooting in Texas in 1993. If the concealed handgun bill becomes law, guns will become even more accessible to children.

Perhaps the biggest contributing factor to shooting tragedies is the negligence with which many gun owners store their weapons. CSHB 44 would provide an effective incentive for gun owners to store their guns safely away from children. Responsible gun owners support this bill because it is the negligent gun owners who put everyone's kids at risk. Most accidental shooting deaths involving children do not occur in their parents' home. It is often the case that a child is killed while playing with a gun at someone else's house. There is no more heartbreaking scene than watching parents who have tried hard to keep their children safe be informed that their child was killed while playing with a neighbor's or friend's gun.

Penal Code sec. 22.04 now imposes a penalty for recklessly or with criminal negligence causing bodily injury to a child age 14 or younger. But this provision fails to penalize negligent storage and does not protect 15 and 16 year olds, who are especially vulnerable to accidental shootings.

OPPONENTS
SAY:

The vast majority of Texas gun owners store their weapons safely out of the reach of their children. This is because the greatest deterrent to leaving a loaded weapon lying around the house is the thought that one's child could be fatally wounded. At the same time, those few gun owners who irresponsibly risk the lives of children by improperly storing guns would not be deterred by the proposed misdemeanor penalty. In the tragic event that a child was injured or killed by a relative's gun, it would be cruel to compound the family's anguish by prosecuting them as criminals. Furthermore, the state already imposes penalties on those who endanger children.

Since most people keep guns in their houses as a form of protection, how could people be expected to protect themselves if they had to store their guns in a hard-to-access locked box? Passage of this bill would give notice to all criminals that law-abiding citizens could no longer readily protect themselves. In addition, this bill would be a violation of civil rights, especially since it regulates possession inside the sanctity of the home. Rather than disarming Texans in their own homes, a more practical solution to keeping guns out of children's hands would be to make the bill's education provisions mandatory and expand the provisions to involve parents as well as children.

NOTES:

The committee substitute deleted provisions in the original version requiring a gun dealer to offer a trigger lock, requiring a specific number of hours of community service for offenders and imposing a penalty if a gun dealer does not post a warning. The substitute also reduced the offense of unlawful storage from a Class A misdemeanor to a Class B misdemeanor and from a third degree felony to a Class A misdemeanor if a child was seriously injured or killed as a result.

Related bills include HB 38 by Greenberg et al., which is similar to CSHB 44 but specifies a standard of recklessness rather than criminal negligence in leaving a gun accessible to children, and HB 652 by J. Jones, which would require civil liability for property damage, personal injury or death caused by a child who gained access to a gun.